

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

DEC - 3 2007

In the Matter of)
)
Investigation of Certain 2007 Annual Access) WC Docket No. 07-184
Tariffs)
) WCB/Pricing No. 07-10

ORDER**Adopted: November 30, 2007****Released: November 30, 2007**

By the Commission:

I. INTRODUCTION

1. In this order, we terminate the investigation regarding the switched access rates contained in the 2007 annual access tariff filings that were suspended by the Wireline Competition Bureau (Bureau) on June 28, 2007.¹ As discussed below, we conclude that the switched access rates of the carriers whose rates were suspended are just and reasonable, and therefore lawful.

II. BACKGROUND

2. In the *Suspension Order*, the Bureau suspended the switched access rates contained in certain local exchange carriers' (LECs) annual access tariff filings pursuant to section 204(a) of the Communications Act of 1934, as amended (the Act), and adopted an accounting order.² The Pricing Policy Division (Division) of the Bureau subsequently designated issues for investigation to address allegations that certain practices of affected LECs may result in significant increases in access demand and access profits, rendering the access rates of these carriers unjust and unreasonable.³ In particular, the Bureau sought to investigate allegations that LECs undertake various activities ("access stimulation") designed to stimulate increased demand for their access services, which, in turn, leads to increased revenue from those access services.⁴ The *Designation Order* also established two means by which LECs

¹ *July 1, 2007 Annual Access Tariff Filings*, WCB/Pricing No. 07-10, Order, DA 07-2862 (Wireline Comp. Bur., rel. Jun. 28, 2007) (*Suspension Order*). The carriers whose tariffs were suspended and subject to investigation are listed in the Appendix to this order.

² 47 U.S.C. § 204(a); *Suspension Order* at 2, 4, paras. 2, 11.

³ *Investigation of Certain 2007 Annual Access Tariffs*, WC Docket No. 07-184 and WCB/Pricing No. 07-10, Order Designating Issues for Investigation, DA 07-3738 (Pricing Pol. Div., rel. Aug. 24, 2007) (*Designation Order*).

⁴ The specific issues designated for investigation included: (1) whether Reasnor Telephone Company's (Reasnor) switched access rates filed in its 2007 annual access tariff filing are just and reasonable; (2) whether the costs of any direct payments, sharing of revenues, or other forms of compensation to the provider of an access stimulating service are properly included in the revenue requirement used to determine a carrier's switched access rates; (3) whether the rates filed in the suspended carriers' 2007 annual access tariff filings will remain just and reasonable if (continued....)

could avoid the investigation. First, the *Designation Order* exempted from responding to the designated issues those LECs other than Reasnor that filed tariff language that committed them to modify their local switching and transport tariff rates in the event they experience an increase in demand above a threshold level.⁵ Alternatively, the *Designation Order* exempted from responding to any issue raised in that order those LECs that filed a waiver request to join the National Exchange Carrier Association, Inc. (NECA) traffic-sensitive tariff.⁶ By September 21, 2007, the date on which Direct Cases in response to the *Designation Order* were due, each LEC whose tariff had been suspended had elected to adopt one of these safe harbors.⁷ Subsequent to release of the *Designation Order*, the Commission adopted a notice of proposed rulemaking to consider more broadly whether the current rules governing the tariffing of traffic-sensitive switched access services by LECs are ensuring that rates remain just and reasonable, particularly when LECs experience substantial growth in access traffic levels.⁸

III. DISCUSSION

3. The suspension of a number of LECs' switched access rates in this year's annual access tariff filings was prompted by a concern that if the tariffs became effective, and were deemed lawful, the LECs could engage in access stimulation activity.⁹ By engaging in such activity, a LEC would increase its demand and revenues dramatically, very likely without a comparable increase in its costs, potentially resulting in unjust or unreasonable rates under section 201 of the Act.¹⁰ The LEC could retain the

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demand increases dramatically; (4) whether the Commission should require carriers subject to this investigation to include language in their tariffs to ensure that it has an opportunity to review a carrier's rates when a significant increase in local switching demand occurs; (5) whether the existing cost support requirements contained in sections 61.38 and 61.39 of the Commission's rules are adequate to permit the Commission to determine that the revised rates filed as a result of a significant increase in access traffic, pursuant to issue four above, are just and reasonable or whether additional data will be necessary; and (6) whether the rates specified in the suspended tariffs have remained, or will remain, just and reasonable during the investigation. *Id.*

⁵ *Designation Order* at 12, para. 28.

⁶ *Id.*

⁷ Six carriers opted to rejoin the NECA traffic-sensitive pool: Reasnor Telephone Company, Lynnville Telephone Company, Sully Telephone Association, Kilduff Telephone Company, Elsie Communications, Inc., and Royal Telephone Company. The remaining carriers all added language to their tariffs consistent with the other safe harbor in the *Designation Order*. Although Sprint Nextel filed a petition to reject the tariff language of Broadband Network Group and ICORE on the grounds that the safe harbor language was incomplete, those carriers amended their tariffs to include the local transport rate adjustment commitment and Sprint Nextel subsequently withdrew its petition. See Letter from Norina T. Moy, Director, Government Affairs, Sprint Nextel, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket No. 07-184, WCB/Pricing No. 07-10 (filed Oct. 2, 2007). In addition, CenturyTel (CenturyTel of Wisconsin, LLC, CenturyTel of Central Wisconsin, LLC, Telephone USA of Wisconsin, LLC, and Spectra Communications Group, LLC) filed a petition for reconsideration of the *Suspension Order*, asserting that it does not engage in access stimulation and asking to have deemed lawful status restored to its switched access rates. *July 1, 2007 Annual Access Charge Tariff Filings*, Petition for Reconsideration, WCB/Pricing No. 07-10 (filed July 30, 2007). By revising its tariffs to incorporate the safe harbor language, and by the action taken in this order, CenturyTel's petition is moot and is thus dismissed.

⁸ *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, Notice of Proposed Rulemaking, FCC 07-176 (rel. Oct. 2, 2007).

⁹ See *Suspension Order* at 2-3, paras. 4, 6.

¹⁰ See *Designation Order* at 8, para. 15; see also 47 U.S.C. § 201.

increased revenues, even though such revenue would significantly exceed the 11.25 rate of return target, because its rates would be deemed lawful and not subject to retrospective refund liability.¹¹

4. By adopting the safe harbors, the LECs have addressed the concerns underlying the tariff suspensions, thus obviating the need to continue this investigation pending the conclusion of the broader rulemaking proceeding we have begun to consider access stimulation issues. With the exception of Reasnor, there were no issues raised with regard to the filed rates of the carriers whose tariffs were suspended.¹² Thus, we conclude that the switched access rates in the annual tariff filings of the carriers whose tariffs were suspended and which filed the tariff language described in the *Designation Order* are lawful.¹³ We also conclude that the rates of the six carriers that entered the NECA traffic-sensitive pool, including Reasnor, were lawful from their effective date until the tariffs were withdrawn. The switched access rates of the carriers entering the NECA traffic-sensitive pool are also lawful. NECA's switched access rates are deemed lawful because they went into effect on June 30, 2007 in accordance with our streamlined tariff filing rules, without suspension.

IV. ORDERING CLAUSES

5. ACCORDINGLY, IT IS ORDERED that, pursuant to sections 201-204 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 201-204, the tariff investigation initiated in WCB Docket No. 07-10 IS TERMINATED.

6. IT IS FURTHER ORDERED that the accounting order applicable to the carriers whose tariffs were suspended IS TERMINATED.

7. IT IS FURTHER ORDERED that the petition for reconsideration filed by CenturyTel IS DISMISSED as moot.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

¹¹ *Designation Order* at 8, para. 15.

¹² Reasnor's rates were challenged by AT&T, which alleged that Reasnor improperly used the average schedule formulas to obtain a significant increase in its rates for tandem switching and tandem switched terminations. AT&T argued that these formulas were designed to create reasonable rates for carriers whose traffic levels do not fluctuate, not to create just and reasonable rates for access-stimulating carriers like Reasnor. See *July 1, 2007 Annual Access Tariff Filings*, Petition of AT&T Corp. to Suspend and Investigate LEC Tariffs Filed Pursuant to Section 61.39, WCB/Pricing No. 07-10 (filed June 22, 2007). Reasnor has rejoined the NECA tariff, and we have no basis for finding that its rates for the three months that it was not participating in the NECA tariff were not lawful.

¹³ Importantly, any carrier that incorporated this language into its tariff that subsequently fails to file any tariff modifications required by this tariff provision will be subject to the Commission's enforcement authority, including cease and desist orders, monetary forfeitures, and monetary damages for such tariff violation. The Supreme Court has affirmed a carrier's obligation to comply with the provisions of its tariffs. See *AT&T v. Central Office Telephone, Inc.*, 524 U.S. 214, 221-222 (1998).

APPENDIX

Parties Subject To This Investigation And
Associated Transmittals Affected by Suspension

<u>Alliance Communications Cooperative</u>	Transmittal Nos. 7 & 9	Tariff F.C.C. No. 2
<u>Broadband Network Group, LLC</u> Arthur Mutual Telephone Company Bascom Mutual Telephone Company Benton Ridge Telephone Company Buckland Telephone Company Fort Jennings Telephone Company Glandorf Telephone Company, Inc. Kalida Telephone Company, Inc. Middle Point Home Telephone Company Ottoville Mutual Telephone Company Ridgeville Telephone Company Sherwood Mutual Telephone Association, Inc. Vaughnsville Telephone Company	Transmittal No. 1	Tariff F.C.C. No. 1
<u>CenturyTel Operating Companies</u> CenturyTel of Central Wisconsin, LLC CenturyTel of Wisconsin Spectra Communications Group, LLC Telephone USA of Wisconsin, LLC	Transmittal No. 55	Tariff F.C.C. No. 1
<u>Consortia Consulting</u> Beresford Municipal Telephone Company McCook Cooperative Telephone Company Roberts County Telephone Cooperative Assn/ RC Communications, Inc. Western Telephone Company	Transmittal No. 1	Tariff F.C.C. No. 1
<u>Elsie Communications, Inc.</u>	Transmittal No. 1	Tariff F.C.C. No. 1
<u>Farmers Mutual Telephone Company (ID)</u>	Transmittal No. 1	Tariff F.C.C. No. 1
<u>ICORE</u> Jordan-Soldier Valley Telephone Company Killduff Telephone Company Lynnville Telephone Company Northeast Iowa Telephone Company, Inc. Reasnor Telephone Company Sully Telephone Association	Transmittal No. 80 & 81	Tariff F.C.C. No. 2

<u>John Staurulakis, Inc.</u> Camden Telephone & Telegraph Company, Inc. Chesnee Telephone Company Gearheart Communications Company, Inc. d/b/a Coalfields Telephone Company Mt. Vernon Telephone Company Oklahoma Communication Systems, Inc. Skyline Telephone Membership Corporation Tennessee Telephone Company Yadkin Valley Telephone Membership Corp	Transmittal No. 130	Tariff F.C.C. No. 1
<u>Royal Telephone Company</u>	Transmittal No. 1	Tariff F.C.C. No. 1
<u>Windstream Telephone System</u> Windstream Communications Kerrville, L.P Windstream Standard, Inc.	Transmittal No. 6	Tariff F.C.C. No. 1